



DEEDS AND OTHER TITLE DOCUMENTS IN CALIFORNIA

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This guide will help you understand about California deeds, including the different types of deeds and available options, when transferring a real property interest. We have tried to answer many of the most frequently asked questions about transfers of title in California, provide a basic understanding of simple terminology relating to real property, and explain the function of the most common deeds utilized by California real property owners. However, there may be exceptions or restrictions, which may apply to your particular matter. If you are unsure about which of the following are appropriate for your use, please consult with an attorney.

Property Transfer Instruments

_____ **Grant deed:** The most commonly used type of deed a Grant Deed is a written instrument by which title to or an interest in real property is transferred from one person or legal entity (grantor) to another (grantee). A Grant Deed does not guarantee or warrant a good title in the grantor although it does imply an absence of encumbrances on the estate conveyed. The term encumbrances includes taxes, assessments and all liens on real property; therefore, the accurate listing of all current encumbrances is a necessary protection for both parties, if the property is so encumbered. Uses: **General property interest transfer, adding someone to title, spouse, child, sibling, parent, removing someone from title, etc.**

_____ **Interspousal Transfer Deed;** specifically transfer to or from spouse, **adding spouse, removing spouse, full transfer to Spouse.** This deed transfers an interest in real property between a husband and wife only (and former spouses). Interspousal Transfer Deeds are usually used in conjunction with the dissolution of a marriage, or upon marriage, or when adding a new spouse to one's title. This deed contains language regarding interspousal transfers under the Revenue and Taxation Code, and exclusion from reappraisal under Proposition 13.

_____ **Trust Transfer Deed:** This deed is used to **transfer property to or from or in or out of a revocable trust; (used also to grant property from a Successor Trustee to Beneficiaries),** a short-term trust not exceeding twelve years; a trust where the trustor, or the trustor's spouse, is the sole beneficiary; a change to the trustee holding title or a transfer from trust to trustor, or trustor's spouse where the prior transfer to the trust was excluded from reappraisal and for a valuable consideration. This deed should also contain language citing the Revenue and Taxation Code, and exclusion from reappraisal under Proposition 13.

_____ **Correction Deed:** **correction of errors, spelling, grammatical, APN, legal description language.**

_____ **Rescission Deed:** **to reverse a deed transfer previously recorded.** Typically used when a deed recording caused tax reassessment when the transferor/transferee was unaware of the tax implications.

_____ **Quit Claim Deed:** Transfer of the rights of interest in property owned by the seller. No guarantees of good title, they have limited uses in real estate transfers. Quitclaim deeds are used for convenience including divorces, in which ownership is transferred to one spouse; to add a spousal name after a marriage; and to transfer property ownership to a trust or other legal entity. There is no warranty or implied covenants as to the title or as to the freedom from encumbrances. The Quitclaim Deed uses wording such as "...do hereby remise, release and forever quitclaim to...." rather than the unqualified "grant(s)" as used in the Grant Deed. The Quitclaim Deed is often used to clear a "cloud on the title",

or to relinquish a possible legal interest held by the grantor. Make certain this is the right deed for what it is you wish to accomplish. **This type of deed found in title history of property may raise red flags for an underwriter with a title company or lender in future transactions.**

_____ **Transfer On Death Deed TODD: (used in place of a Trust to avoid probate)** allows property to be automatically transferred to a new owner when the current owner dies, without the need to go through probate. It also gives the current owner retained control over the property, including the right to change his or her mind about the transfer. Limitation to selling property after death of owner may restrict transfer to not before 2 years. Also, the property must be owner occupied.

_____ **Mobile Home Transfers:** Only mobile homes that have been installed on a foundation are considered real property and, thus, can be transferred by deed. Mobile homes and manufactured houses that are not installed on a foundation approved by the California State Department of Housing and Community Development, (HCD) are transferred by a title document similar to title to a car. When the mobile home is put on an approved foundation (building permit is required), a local agency issues a certificate of occupancy and records with the county recorder, a document stating that a mobile home has been affixed to real estate. The Department of Housing cancels the registration, and the owner gives the certificate of title back to the Department. From then on, the mobile home is transferred by deed to the land it is situated. Uses: **Full ownership transfer, adding or removing names from registration. Property taxes will need to be paid through next billing cycle and transfers cannot take place on mobile homes that have a mortgage outstanding. For information on registration and titling of mobile homes, please go to www.hcd.ca.gov.**

Affidavits of Death

_____ **Affidavit of Death of Joint Tenant :** Upon the death of a person who was holding title to real property as a joint tenant, the surviving joint tenant(s) records this affidavit to vest the deceased tenant's interest in the surviving joint tenants (as of the time of death of the deceased). A complete property description is required, as well as an attached certified copy of the death certificate of the decedent. **Removes the name of a decedent joint tenant (may be Spouse) from title to property.**

_____ **Affidavit Of Death of Spouse, Community Property With Right Of Survivorship** This affidavit works similarly to an Affidavit - Death of Joint Tenant. The persons holding title to the property must have been married at the time of the first death, and the deed to the real property must show they hold title as "Community Property with Right of Survivorship". **Removes the name of a decedent Spouse from title to property.**

_____ **Affidavit of Death of Spouse Succeeding Title To Community Property** The persons holding title to the property must have been married at the time of the first death, and held title as "Community Property." At least forty days have passed since the death, and no will was found for the deceased person. Note: If a will was found, or if you have to collect assets other than real property that are held only in the name of the deceased spouse, you may have to file a Spousal Property Petition instead. Consult CALDA's Probate brochure to read about Spousal Property Petitions.

_____ **Affidavit of Death of Trustee :** The person(s) holding title to the property owns the property as trustee of his or her living trust, and the successor trustee will sign the Affidavit of Death when succeeding to the role of trustee. This does not change the ownership of the property, it merely shows that a new trustee has taken over management of the trust and the property it owns. **Removes the name of a decedent Trustee from title. Transfer to surviving Trustee or to Successor Trustee named in Trust.**

_____ **Affidavit - Change of Trustee:** This process is outlined in Probate Code Section 18105, and is a more versatile document for recording the change of trustee of a living trust. In addition to being used when a trustee dies owning property, it can also be used if a trustee resigns or becomes incompetent

because of dementia or another medical condition. You must state the reasons for the change of trustee, and attach supporting documentation, such as doctor's letters.

_____ **Deed of Trust (typically prepared with a Note/Loan)** A Deed of Trust (a Lien) is utilized by a borrower (trustor) to convey "bare legal" title to the subject property to a neutral party (trustee) in order to secure an obligation (usually the payment of a promissory note) payable to a lender (beneficiary). The trustee (usually a corporation) gives instructions to issue a Deed of Reconveyance (when the obligation has been paid in full) or to begin foreclosure proceedings because the trustor is in default on the loan. The trustee is given a "power of sale" (non-judicial foreclosure) and proceeds from the trustee's sale will apply as payment toward the defaulted obligation. These documents are also referred to "mortgages" or "liens", and are recorded in the county where the property is located.

Miscellaneous County Required Forms

_____ **Preliminary Change of Ownership form (PCOR)** This form is used as a data entry form for the county with any transfer of property. It provides the county with all pertinent information regarding the property transfer, so it can record that transfer properly. (From BOE-502-A). **This form is required to accompany any document submitted to the county that changes title to the property**

_____ **Claim for Reassessment Exclusion for Transfer Between Parent and Child / Grandparent and Grandchild.** These forms are submitted to the County Assessor after a deed is recorded transferring property from parent to child, or child to parent, to claim eligibility for exclusion of reassessment of property taxes.

_____ **Claim for Homeowners' Property Tax Exemption** California property tax laws provide two alternatives by which the Homeowners' Exemption, up to a maximum of \$7,000 of assessed value, may be granted. The exemption is available to an eligible owner of a dwelling, which is occupied as the owner's principal place of residence as of 12:01 a.m., January 1 each year.

_____ **Documentary Transfer Tax Affidavit (required in select Counties in California)** This form must accompany **any document that requires a Documentary Transfer Tax Declaration, including but not limited to:** Agreement for Sale; Assignment of Lease; Deed in Lieu of Foreclosure; Easement; **Grant Deed;** Land Contract; Lease; Memorandum of Lease.

_____ **Declaration letter (for business entity transfers)** The purpose of this document is to demonstrate to the county that the transaction is exempt from transfer tax because no proportional interest in changing with the recording of the deed associated with the transaction.

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Common Ways to Hold Title

How should I take ownership of the property I am buying?

The form of ownership taken (the vesting of title) will determine who may sign various documents involving the property and future rights of the parties to the transaction. These rights involve such matters as: real property taxes, income taxes, inheritance and gift taxes, transferability of title and exposure to creditor's claims. Also, how title is vested can have significant probate implications in the event of death.

Buyers may wish to consult legal counsel to determine the most advantageous form of ownership for their particular situation, especially in cases of multiple owners of a single property.

Following is a brief list of common ways to hold title:

Sole Ownership- Sole ownership may be described as ownership by an individual or other entity capable of acquiring title. Examples of common vesting cases of sole ownership are:

1. A Single Man/Woman: A man or woman who is not legally married or in a domestic partnership. *For example: Bruce Buyer, a single man.*

2. A Married Man, Woman as His/ Her Sole and Separate Property: A married man or woman who wishes to acquire title in his or her name alone.

The title company insuring title will require the spouse of the married man or woman acquiring title to specifically disclaim or relinquish his or her right, title and interest to the property. This establishes that both spouses want title to the property to be granted to one spouse as that spouse's sole and separate property. *For example: Bruce Buyer, a married man, as his sole and separate property.*

Co-Ownership-Title to property owned by two or more persons may be vested in the following forms:

1. Community Property: A form of vesting title to property owned together by married persons. Community property is distinguished from separate property, which is property acquired before marriage, by separate gift or bequest, after legal separation, or which is agreed in writing to be owned by one spouse.

In California, real property conveyed to a married person, is presumed to be community property, unless otherwise stated (i.e. property acquired as separate property by gift, bequest or agreement). Since all such property is owned equally, both parties must sign all agreements and documents transferring the property or using it as security for a loan. Each owner has the right to dispose of his/her one half of the community property, by will. *For example: Bruce Buyer and Barbara Buyer, husband and wife, as community property or Sally Smith and Jane Smith, spouses, as community property.*

2. Community Property with Right of Survivorship: A form of vesting title to property owned together by spouses. This form of holding title shares many of the characteristics of community property but adds the benefit of the right of survivorship similar to title held in joint tenancy. There may be tax benefits for holding title in this manner. On the death of an owner, the decedent's interest ends and the survivor owns the property. *For example: Bruce Buyer and Barbara Buyer, husband and wife, as community property with right of survivorship, or John Buyer and Bill Buyer, spouses, as community property with right of survivorship.*

3. Joint Tenancy: A form of vesting title to property owned by two or more persons, who may or may not be married, in equal interests, subject to the right of survivorship in the surviving joint tenant(s). Title must have been acquired at the same time, by the same conveyance, and the document must expressly declare the intention to create a joint tenancy estate. When a joint tenant dies, title to the property is automatically conveyed by operation of law to the surviving joint tenant(s). Therefore, joint tenancy property is not subject to disposition by will. *For example: Bruce Buyer, a married man and George Buyer, a single man, as joint tenants.*

Note: If a married person enters into a joint tenancy that does not include their spouse, the title company insuring title may require the spouse of the married man or woman acquiring title to specifically consent to the joint tenancy.